

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Amendment of Section 73.622(j),
Table of Allotments, Television Broadcast
Stations (Albany, New York)
MB Docket No. 22-13
RM-11914

REPORT AND ORDER

(Proceeding Terminated)

Adopted: April 4, 2022

Released: April 4, 2022

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking issued in response to a Petition for Rulemaking filed by WNYT-TV, LLC (Petitioner), the licensee of WNYT-TV (Station), channel 12, Albany, New York. The Petitioner has requested the substitution of UHF channel 21 for VHF channel 12 in the Table of Allotments. The Petitioner filed comments in support of the petition, as required by the Commission's rules, reaffirming its commitment to apply for channel 21. No other comments were filed.

2. We believe the public interest would be served by substituting channel 21 for channel 12 at Albany, New York. The Petitioner states that the Station has a long history of significant reception problems given the local terrain, and that these problems were exacerbated by the Station's conversion from analog to digital operations on VHF channel 12, when it received numerous complaints from viewers about the Station's over-the-air signal. In response to these complaints, the Petitioner applied for and received modification authorizations to increase the Station's effective radiated power (ERP) from 9.1 kW to 30 kW. According to the Petitioner, its proposal will result in a net gain in service to 289,588 persons within the Station's predicted noise limited service contour. While the proposal will result in a

1 Amendment of Section 73.622(j), Table of Allotments, Television Stations (Albany, New York), MB Docket No. 22-13, Notice of Proposed Rulemaking, DA 22-24 (rel. Jan. 11, 2022) (NPRM).

2 47 CFR § 73.622(j).

3 47 CFR §§ 1.415, 1.419; see also Buffalo, Iola, Normangee, and Madisonville, Texas, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

4 NPRM at para. 2. The Petitioner states that because of the proximity of the Green, Berkshire, Catskill, and Adirondack mountain ranges, it has operated multiple television translator stations in an effort to serve viewers. Id. at n.3.

5 Id. at 2.

6 Id.

loss population of 210 persons within the predicted noise limited contour,⁷ the Petitioner demonstrated that the population within the loss area is currently served by at least five over-the-air television services.⁸

3. In addition, the Station is an NBC affiliate, and the Petitioner submitted an analysis, using the Commission's *TVStudy* software analysis program, demonstrating that after taking into account service provided by another NBC station, all of the population located within the Station's original DTV channel 12 noise limited contour will continue to receive NBC service,⁹ except for 130 people.¹⁰ Moreover, the proposed channel 21 facility will result in 30,075 persons gaining access to NBC network programming that did not have it before.¹¹

4. As proposed, channel 21 can be substituted for channel 12 at Albany, New York, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's rules,¹² at coordinates 42° 37' 31.3" N and 074° 00' 36.7" W. Although the Petitioner's proposal would result in a loss of 210 persons, all but 130 persons would no longer receive NBC network service and all viewers within the loss area will be served by at least five over-the-air television services. We find such a loss to be *de minimis*,¹³ and the public interest is clearly benefited by the significant number of persons who will gain their first NBC network service. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:¹⁴

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>Service Pop.</u>
Albany, New York	21	970	414	1,966,586

5. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹⁵ An expedited effective date is necessary in this case to ensure that WNYT can operate with improved service to its viewers as quickly as possible.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r) and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b) and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal

⁷ As the Bureau explained in the *NPRM*, it used the technical parameters of the Station's original pre-transition digital channel 12 facility (FCC File No. BLCDDT-20031022ABL) in determining any predicted loss which may occur from the proposed channel substitution. *Id.* at n.7. The Bureau has followed this practice with respect to channel substitution rulemaking petitions filed by other stations operating on digital VHF channels and seeking to move to UHF channels. *See, e.g., Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Stations (Schenectady, New York)*, MB Docket No. 22-127, Notice of Proposed Rulemaking, 36 FCC Rcd 7073 (Vid. Div. 2021); Report and Order, DA 21-700 (rel. June 16, 2021).

⁸ *Id.* at para. 3.

⁹ WKTV, channel 29, Utica, New York, is an NBC network affiliate and serves much of the loss area. *See* Amended Technical Statement.

¹⁰ *NPRM* at para. 3.

¹¹ *Id.* at n.9.

¹² 47 CFR § 73.625(a).

¹³ *See WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that population loss of less than 500 persons is *de minimis*).

¹⁴ 47 CFR §§ 73.616, 73.623.

¹⁵ 5 U.S.C. § 553(d)(3).

Register, the Table of Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>
Albany, New York	8, 21, 24

7. **IT IS FURTHER ORDERED**, That within 30 days of the effective date of this Order, WNYT-TV, LLC shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 21 in lieu of channel 12.

8. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office.

9. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-13 and RM-11914 **SHALL BE TERMINATED** and its docket closed.

10. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, (202) 418-1647, Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau